UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORATION,	§	
	§	
Plaintiff/Counter-Defendant,	§	
	§	Civil Action No. 2:06cv72
vs.	§	
	§	Jury Trial Demanded
WELLS FARGO & COMPANY, et al.,	§	
	§	
Defendants/Counter-Plaintiffs.	§	

UBS AMERICAS, INC.'S AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO DATATREASURY CORPORATION'S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Defendant UBS Americas, Inc. ("UBSAI") files this Answer to DataTreasury Corporation's ("DataTreasury's") First Amended Complaint for Patent Infringement ("Amended Complaint"), along with its Defenses and Counterclaims, denying infringement of any valid claim of U.S. Patents Nos. 5,910,988 (the "'988 patent"), 6,032,137 (the "'137 patent"), 5,265,007 (the "'007 patent"), 5,583,759 (the "'759 patent"), 5,717,868 (the "'868 patent"), and 5,930,778 (the "'778 patent"). In accordance with the Federal Rules of Civil Procedure and to preserve its rights, UBSAI files this pleading subject to and without waiving its rights pursuant to the partial stay currently in effect.

I. PARTIES

1. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 1 and, therefore, denies them.

2. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 2 and, therefore, denies them.

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3. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 3 and, therefore, denies them.

4. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 4 and, therefore, denies them.

5. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 5 and, therefore, denies them.

6. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 6 and, therefore, denies them.

7. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 7 and, therefore, denies them.

8. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 8 and, therefore, denies them.

9. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 9 and, therefore, denies them.

10. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 10 and, therefore, denies them.

11. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 11 and, therefore, denies them.

12. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 12 and, therefore, denies them.

13. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 13 and, therefore, denies them.

14. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 14 and, therefore, denies them.

15. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 15 and, therefore, denies them.

16. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 16 and, therefore, denies them.

17. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 17 and, therefore, denies them.

18. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 18 and, therefore, denies them.

19. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 19 and, therefore, denies them.

20. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 20 and, therefore, denies them.

21. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 21 and, therefore, denies them.

22. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 22 and, therefore, denies them.

23. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 23 and, therefore, denies them.

24. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 24 and, therefore, denies them.

25. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 25 and, therefore, denies them.

26. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 26 and, therefore, denies them.

27. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 27 and, therefore, denies them.

28. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 28 and, therefore, denies them.

29. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 29 and, therefore, denies them.

30. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 30 and, therefore, denies them.

31. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 31 and, therefore, denies them.

32. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 32 and, therefore, denies them.

33. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 33 and, therefore, denies them.

34. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 34 and, therefore, denies them.

35. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 35 and, therefore, denies them.

36. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 36 and, therefore, denies them.

37. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 37 and, therefore, denies them.

38. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 38 and, therefore, denies them.

39. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 39 and, therefore, denies them.

40. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 40 and, therefore, denies them.

41. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 41 and, therefore, denies them.

42. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 42 and, therefore, denies them.

43. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 43 and, therefore, denies them.

44. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 44 and, therefore, denies them.

45. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 45 and, therefore, denies them.

46. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 46 and, therefore, denies them.

47. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 47 and, therefore, denies them.

48. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 48 and, therefore, denies them.

49. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 49 and, therefore, denies them.

50. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 50 and, therefore, denies them.

51. Admitted.

52. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 52 and, therefore, denies them.

53. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 53 and, therefore, denies them.

54. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 54 and, therefore, denies them.

55. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 55 and, therefore, denies them.

56. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 56 and, therefore, denies them.

57. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 57 and, therefore, denies them.

58. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 58 and, therefore, denies them.

II. JURISDICTION AND VENUE

59. UBSAI admits that this action arises under 35 U.S.C. §§ 101 et seq., and that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

60. UBSAI will not dispute personal jurisdiction in this case but denies the allegations in Paragraph 60 to the extent that they pertain to UBSAI. To the extent that the remaining allegations in this paragraph relate to other defendants, UBSAI is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them. UBSAI denies the remaining allegations in paragraph 60.

61. UBSAI will not dispute venue in this case, but denies the allegations in Paragraph 61.

62. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 62 and, therefore, denies them.

63. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 63 and, therefore, denies them.

64. UBSAI denies the allegations contained in Paragraph 64 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

65. UBSAI denies the allegations contained in Paragraph 65 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

III. PATENT INFRINGEMENT

66. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 66 of the Amended Complaint and, therefore, denies them.

67. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 67 of the Amended Complaint and, therefore, denies them.

68. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 68 of the Amended Complaint and, therefore, denies them.

69. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 69 of the Amended Complaint and, therefore, denies them.

70. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 70 of the Amended Complaint and, therefore, denies them.

71. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 71 of the Amended Complaint and, therefore, denies them.

72. UBSAI denies that this is an exceptional case within the meaning of 35 U.S.C. § 285 to the extent that DataTreasury's allegation that the case is exceptional relates to UBSAI or is based on any action or inaction on the part of UBSAI. UBSAI is without sufficient information to form a belief as to the truth of this allegation as it relates to any of the other named defendants and, therefore, denies the allegation.

IV. COUNT ONE – THE '988 DEFENDANTS

73. UBSAI denies the allegations contained in Paragraph 73 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

74. UBSAI denies the allegations contained in Paragraph 74 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

75. UBSAI denies the allegations contained in Paragraph 75 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

76. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 76 and, therefore, denies them.

V. COUNT TWO – THE '137 DEFENDANTS

77. UBSAI denies the allegations contained in Paragraph 77 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

78. UBSAI denies the allegations contained in Paragraph 78 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

79. UBSAI denies the allegations contained in Paragraph 79 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

80. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 80 and, therefore, denies them.

VI. COUNT THREE – THE '007 DEFENDANTS

81. UBSAI denies the allegations contained in Paragraph 81 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

82. UBSAI denies the allegations contained in Paragraph 82 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

83. UBSAI denies the allegations contained in Paragraph 83 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

VII. COUNT FOUR – THE '759 DEFENDANTS

84. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 84 and, therefore, denies them.

85. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 85 and, therefore, denies them.

86. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 86 and, therefore, denies them.

VIII. COUNT FIVE – THE '868 DEFENDANTS

87. UBSAI denies the allegations contained in Paragraph 87 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

88. UBSAI denies the allegations contained in Paragraph 88 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

89. UBSAI denies the allegations contained in Paragraph 89 to the extent they are directed to UBSAI. UBSAI is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

IX. COUNT SIX – THE '778 DEFENDANTS

90. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 90 and, therefore, denies them.

91. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 91 and, therefore, denies them.

92. UBSAI is without sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 92 and, therefore, denies them.

X. AFFIRMATIVE DEFENSES

93. UBSAI denies that it has infringed any of the asserted patents or that DataTreasury is entitled to any relief against UBSAI and additionally asserts the defenses that follow. By asserting these defenses, UBSAI does not suggest or concede that it has the burden of proving the matter.

A. INVALIDITY

94. One or more of the claims of each of the patents asserted against UBSAI are invalid for a failure to comply with the provisions of the patent laws, 35 U.S.C. § 100 *et seq.*, including but not limited to one or more of 35 U.S.C. §§ 102, 103, and 112.

B. LACHES, WAIVER, ESTOPPEL, UNCLEAN HANDS, FIRST SALE/PATENT EXHAUSTION

95. DataTreasury's causes of action are barred by the doctrines of laches, waiver, estoppel, unclean hands, and first sale/patent exhaustion.

C. STANDING

96. DataTreasury has no standing to assert claims of infringement with respect to at least the '988 and/or '137 patents because DataTreasury is not the owner of those patents.

D. GOVERNMENT AUTHORIZATION OR CONSENT UNDER 28 U.S.C. § 1498(a)

97. At least some of the allegedly infringing activities of UBSAI that DataTreasury complains of in its Complaint were "for the Government and with the authorization or consent of the Government" for the purposes of 28 U.S.C. § 1498(a).

98. At least part of DataTreasury's remedy for UBSAI's allegedly infringing use complained of in the Complaint "shall be by action against the United States in the United States Court of Federal Claims for the recovery of [its] reasonable and entire compensation for such use" pursuant to 28 U.S.C. § 1498(a).

XI. COUNTERCLAIMS

A. PARTIES

99. Counterclaimant UBSAI is a corporation organized under the laws of Delaware, with its principal place of business at 677 Washington Blvd., Stamford, Connecticut 06901.

100. DTC alleges that it is a Delaware corporation that maintains its principal place of business at 101 East Park Blvd., #600, Plano, Texas 75074.

B. JURISDICTION AND VENUE

101. The counterclaims include claims for declaratory judgment of patent non-infringement and patent invalidity, and jurisdiction is proper under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, and the patents laws of the United States, 35 U.S.C. §§ 100 *et seq*., concerning actions related to patents, and 28 U.S.C. § 1331 and 1338(a).

102. Venue is proper in this Court under 28 U.S.C. § 1391(c) and § 1400(b).

C. COUNT ONE – DECLARATORY RELIEF REGARDING NON-INFRINGEMENT

103. Based on the filing by DataTreasury of this suit and USBAI's defenses, an actual controversy has arisen and now exists between the parties as to whether or not UBSAI has directly and/or indirectly infringed any valid claim of the '988, '137, '807 or '868 patents.

104. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq*., UBSAI requests a declaration from the Court that UBSAI has not infringed and is not infringing

any valid claim of the ‘988, ‘137, ‘807 or ‘868 patents, either directly, contributorily, or by inducement, either literally or under the doctrine of equivalents.

D. COUNT TWO – DECLARATORY RELIEF REGARDING INVALIDITY

105. Based on the filing by DataTreasury of this suit and USBAI’s defenses, an actual controversy has arisen and now exists between the parties as to the validity of each of the claims of the ‘988, ‘137, ‘807 and ‘868 patents.

106. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq*., UBSAI requests a declaration from the Court that UBSAI that each of the claims of the ‘988, ‘137, ‘807 and ‘868 patents are invalid for failure to comply with the provisions of the patent laws, 35 U.S.C. § 100 *et seq*., including but not limited to one or more of 35 U.S.C. §§ 102, 103, and 112.

XII. EXCEPTIONAL CASE

107. This is an exceptional case under 35 U.S.C. § 285, and as such, UBSAI is entitled to recover from DataTreasury UBSAI’s attorneys’ fees and costs incurred in connection with this action.

XIII. JURY DEMAND

UBSAI demands a trial by jury on all issues so triable.

XIV. PRAYER

WHEREFORE, UBSAI prays that:

1. DataTreasury’s Amended Complaint against UBSAI be dismissed, with prejudice, and that a take-nothing judgment be entered in favor of UBSAI;

2. Judgment be entered in favor of UBSAI declaring that each of the claims of the ‘988, ‘137, ‘007, and ‘868 patents is invalid, and that UBSAI has not infringed, contributed to

the infringement, or induced the infringement of any claim of any of the ‘988, ‘137, ‘007, or ‘868 patents, either directly or indirectly;

3. Judgment be entered in favor of UBSAI and against DataTreasury that this is an exceptional case and awarding UBSAI its attorneys’ fees and costs under 35 U.S.C. § 285; and

4. UBSAI be awarded any such other and further relief as is just and proper.

Dated: April 9, 2007.

Respectfully submitted,

/s/ Scott W. Breedlove

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Attorneys for UBS Americas, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3)(A) on April 9, 2007.

/s/ Scott W. Breedlove
Scott W. Breedlove

Dallas 1204481v3